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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943.

No. 823

RUTH COHEN, PERSONALLY AND AS ADMINISTRATRIX WITH THE WILL ANNEXED OF THE ESTATE OF BENJAMIN E. COHEN, DECEASED, JEAN COHEN, BETTY COHEN AND CHARLES JAMES COHEN,

Respondents,

vs.

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT OF PETITION.

J. ROBERT COHLER,
Counsel for Petitioner.

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NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes New England Mutual Life Insurance Company, a Corporation, petitioner, and respectfully petitions this Honorable Court to grant a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit to review a judgment of that Court affirming a decree of the District Court of the United States for the Northern District of Illinois, Eastern Division.

A certified transcript of the Record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith, in compliance with Rule 38 of this Court.

Summary and Short Statement of the Matter Involved.

This action was brought against petitioner for specific performance of an alleged contract for the sale by petitioner to one Benjamin E. Cohen of certain real estate. The District Court entered a decree for specific performance, from which petitioner appealed to the Circuit Court of Appeals. Pending the appeal, the plaintiff, Benjamin E. Cohen, died and respondents were substituted for him. The Circuit Court of Appeals affirmed the decree of the District Court.

This petition is directed to a review of the decision of the Circuit Court of Appeals.

Jurisdiction.

1. This is a suit arising under Section 24(1) of the United States Judicial Code, as amended, between Benjamin E. Cohen, a citizen of the State of Illinois (succeeded by respondents) and petitioner, a corporation organized by a special statute of the State of Massachuetts, and a citizen of the State of Massachusetts, which suit was originally commenced in the State Court and thereafter upon application by petitioner was removed to said District Court.

2. The jurisdiction of this Court is invoked under Section 240 (a) of said Judicial Code, as amended.

3. The date of the decree which petitioner seeks to have reviewed is August 20, 1943 (Tr. 219). The petition for rehearing was denied on February 28, 1944.

Questions Presented.

1. Whether the delivery by petitioner to its own attorneys of the alleged acceptance of the offer of Benjamin E. Cohen constituted a relinquishment by petitioner of possession and control thereof so as to amount to a delivery of such alleged acceptance by petitioner to said Benjamin E. Cohen, and thus to the creation of a binding agreement between the parties.

2. Whether possession of a document by a party's own attorneys is to be considered the same as possession thereof by that party himself.

3. Whether an offeree can be deemed to have accepted a written offer (which acceptance is required by the offer to be in writing and to be delivered) while the document required to constitute the acceptance is still in the possession of the offeree's own attorneys.

Reasons Relied On for Allowance of the Writ.

The discretionary power of this Court to grant a writ of certiorari is invoked upon the following grounds:

1. That the decision of the Circuit Court of Appeals strikes at the very root of the confidential attorney and client relationship because, in effect, it deprives petitioner of the right to the privacy of possession of documents by its own attorneys and to the protection of its rights by its own attorneys.

2. That the decision of the Circuit Court of Appeals is contrary to the fundamental and salutary rule that possession of a document by one's own attorneys is the same as possession thereof by the client itself.

3. That the Circuit Court of Appeals, in effect, by its decision has refused to recognize that delivery by peti-

tioner to its own attorneys of the alleged acceptance could not amount to a relinquishment of possession and control thereof by petitioner.

4. The decision of the Circuit Court of Appeals is in apparent conflict with the decision of another Circuit Court of Appeals, and the Court has decided an important question of local law in a way probably in conflict with applicable local decisions.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit should be granted.

J. ROBERT COHLER,
Counsel for Petitioner.